

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ITA No.442 of 2006
Date of decision:16.11.2006

M/s. Steel Strips Limited, Chandigarh

....Appellant

versus

Commissioner of Income Tax, Chandigarh and another

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Akshay Bhan, Advocate, for the appellant.

JUDGMENT:

This appeal has been preferred by the assessee against the order dated 14.12.2005 passed by the Income Tax Appellate Tribunal, Chandigarh, Bench 'A' Chandigarh (for short, 'the Tribunal') in ITA No.1169/Chandi/97, for the assessment year 1995-96, proposing following substantial questions of law:-

- “i) Whether in facts and circumstances of the case, the action of the authorities below in holding the transport subsidy received by the appellant as a revenue receipt, when the same has been aptly held to fall under the capital receipt as per the Hon'ble supreme Court and various other High Courts is a capital receipt, is legally sustainable in the eyes of law?
- ii) Whether in facts and circumstances of the case, the action of the authorities below in acting on its own presumption without any legal basis and ignoring the various judicial precedents as laid down by the company is legally sustainable in the eyes of law?
- Iii) Whether in facts and circumstances of the case, the action of the authorities below, the impugned orders, Annexures A-1 and A-3 are legally sustainable in the eyes of law?”

For the assessment year 1995-96, the assessee, inter-alia, claimed deduction of transport subsidy received by the assessee, which was disallowed. However, the CIT(A) upheld the claim of the assessee. On further appeal, the Tribunal restored the order of the Assessing Officer relying upon judgment of the Hon'ble Supreme Court in **Sahney Steel and Press Works Limited and others v. CIT**, (1997) 228 ITR 253.

Learned counsel for the assessee submitted that judgment of the Hon'ble Supreme Court in **Sahney Steel's** case (supra) was distinguishable and the Gauhati High Court in **CIT v. Assam Asbestos Limited**, (1995) 215 ITR 847 upheld the finding of the Tribunal that transport subsidy could not be treated as trading or revenue receipt but in the nature of grant or gift to the assessee for the sole purpose of assisting the assessee for the growth of industries.

The relevant clause in the subsidy scheme of the Central Government for incentives to industries set up in the backward areas is reproduced hereunder:-

“Transport subsidy scheme

The scheme envisages grant of transport subsidy to industrial units in selected areas to the extent of 75% of the transport costs of industrial raw material which are brought into and finished goods which are taken out of the selected areas between locations of new/existing units and identified railheads/ports listed (Appendix -V). With effect from 1.9.1986 the percentage of transport subsidy has been enhanced from 75% to 90% for units located in the North Eastern Region. Andaman & Nicobar Islands, Lakshadweep and Sikkim and w.e.f 1.12.1986 for units in J&K, the Scheme has also been extended to cover units set up on or after 1.1.1960. The scheme has also been extended to Darzeeling district of west Bengal w.e.f 1.3.1987. Transport subsidy is also admissible for movement of raw materials only from one State to another within the NE Region. Transport Subsidy has also been extended to cover 75% of the air freight on movement of electronics components/products by air to and from Calcutta upto the location of the industrial units in the NER and vice versa.

This scheme covers the States of Jammu and Kashmir, Himachal Pradesh, Hilly areas of Uttar Pradesh and Northern Eastern Region comprising the states of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh, Mizoram and Sikkim, the Union Territories of Andaman and Nicobar Islands, Lakshadweep and

Darzeeling, Districts of West Bengal.

Identified promotional institutions which transact business on behalf of small, village and cottage industries are also eligible for subsidy.”

We are unable to accept the submission. Judgment of the Gauhati High Court in **Assam Asbestos Limited's** case is dated 28.8.1995 while the judgment of the Hon'ble Supreme Court in **Sahney Steel's** case (supra) is dated 19.9.1997. In **Merinoply and Chemicals Limited v. CIT,** (1994) 209 ITR 508, the Calcutta High Court considering a similar scheme of the Central Government, decided the issue in favour of the revenue and against the assessee. In **Sahney Steel's** case, the Hon'ble Supreme Court observed:-

“In the case before us, the subsidies have not been granted for production of or bringing into existence any new asset. The subsidies were granted year after year only after setting up of the new industry and commencement of production. Such a subsidy could only be treated as assistance given for the purpose of carrying on of the business of the assessee. Applying the test of Viscount Simon in the case of Ostone (1946) 14 ITR (Suppl) 45 (HL), it must be held that these subsidies are of revenue character and will have to be taxed accordingly.”

In the present case, it was found by the Tribunal that transport subsidy was given on transport of raw material brought into the factory and also on transport of finished goods which was trading activity.

In view of the fact that the issue raised is covered by judgment of the Hon'ble Supreme Court in **Sahney Steel's** case (supra), we are unable to hold that any substantial question of law arises for consideration.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

November 16, 2006
'gs'

(Rajesh Bindal)
Judge